



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 17977880

Date: AUG. 19, 2021

**Appeal of Texas Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a youth minister, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

The Director did not make a determination regarding the Petitioner's eligibility as a member of the professions holding an advanced degree. The record reflects that the Petitioner possesses the foreign equivalent of an advanced degree. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) and (3)(i)(A).

### B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a "Statement of Purpose and Plan" indicating that she intends "[t]o assist in reorganizing the structure of the Youth Wing of the [redacted] located in [redacted] Maryland] in order to foster participation and encourage them to make informed decisions regarding lifestyle changes and choices that can improve quality of life and good health." In addition, she listed various plans such as: "[t]o draw up programs and enforce strategies that regulate beneficial moral and health behaviors among the youths," "[t]o carry out research and develop study materials that will be used to prepare messages and instructions in the Youth Department," and "[t]o organize prayer walks by arranging with the Senior Pastor to incorporate health messages into the sermons."

In response to the Director's request for evidence (RFE), the Petitioner updated her proposed endeavor and claimed:

My role as a Youth Outreach Minister, will focus primarily on youths and young adults of immigrant families across the United States, especially those coming from Nigeria and West Africa states. These families and young adults are especially susceptible to Islamic radicalization and potentially being recruited to United States based terror cells which is clearly against the national interest.

....

... As Youth Outreach Minister, I will be organizing outreach activities and organizing support groups to help influence Muslim and non-Muslim youths in the United States.

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<sup>3</sup> *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

....

Just like in Northern Nigeria, I also intend to leverage my formal education in my role as Youth Outreach Minister to make an impact in the current fight against epidemic of opioids abuse.

....

... As a Youth Outreach Minister who is versatile in the area of cultural competence, in addition to my public health knowledge, and as someone that has tremendous passion to help the youths develop good mindset together with my vast experience in working with youths of different cultural background, I am of the advantage to help our youths to shun those social vices which will help them make healthy decisions. This type of service has national importance because no nation wants majority of its population to be diagnosed with mental ill health.

The Petitioner maintains on appeal:

[She] is a licensed Medical Laboratory Scientist. She has been able to effectively combine her academic training, life and work experience so as to be very beneficial in the United States. Her letters of recommendation from her present and past employers is an attestation to the fact that she is able and willing to take on the duties required as a Youth Outreach Minister.

The Director determined that the Petitioner demonstrated the substantial merit of her proposed endeavor, and the record supports that conclusion. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of her proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of her providing specific youth outreach ministerial services rather than the national importance of youth outreach, youth ministerial services, or other social or religious industries in which she intends to work. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

As indicated above, the Petitioner’s emphasizes her “academic training, life and work experience” on appeal. However, the Petitioner’s experience, skills, and abilities in her field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. The Petitioner did not point, either at the time of filing or in the RFE response, to which evidence demonstrates the national importance aspect of her proposed endeavor. On appeal, the Petitioner provides previously submitted documentation, as well as newly offered evidence, such as a "Youth Ministry Handbook" from [ ] registration form for an [ ] course taught by the Petitioner, and recommendation letters. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Regardless, the evidence does not show that the Petitioner's proposed endeavor of providing youth outreach services stands to sufficiently extend beyond [ ] to impact the field or the U.S. economy more broadly at a level commensurate with national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Furthermore, the Petitioner has not established that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's youth ministerial services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.